

REMARKS

Claims 1, 43-59 and 67 have been amended. Claims 1-15, 23-30, 32-59 and 67-68 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Section 101 Rejection:

The Examiner rejected claims 1-15, 43-59, 67 and 68 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The Examiner argues that claims 1-15 and 67-68 “fail to contain a tangible, useful result” and that claims 43-59 “are merely [an abstract] idea” … “without any links to a practical result in the technology arts.” Applicants respectfully traverse this rejection for at least the following reasons.

The Examiner has not properly analyzed the claims according to the “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility” (hereinafter, “Guidelines) from the Official Gazette Notice of 22 November 2005 (<http://www.uspto.gov/web/offices/com/sol/og/2005/week47/patgupa.htm>). According to the Guidelines, the Examiner must follow a specific multi-part review of each claim. As shown below, the Examiner has not set out a *prima facie* rejection according to the specific required multi-part review in the Guidelines.

According to the Guidelines IV.B, the Examiner “must first identify whether the claim falls within at least one of the four enumerated categories of patentable subject matter recited in section 101 (process, machine, manufacture or composition of matter).” Applicants’ claims clearly satisfy this requirement. For example, claim 1 clearly falls within the “process” category of patentable subject matter recited in section 101.

Next, according to the Guidelines IV.C, the Examiner must “determine whether the claimed invention includes one of the section 101 judicial exceptions - laws of nature, natural phenomena and abstract ideas. Here is where the Examiner has not

performed a proper analysis. According to the Guidelines, the “useful, concrete and tangible result” analysis only applies if the Examiner has first established a *prima facie* case that the claimed invention claimed invention includes a law of nature, natural phenomenon or abstract idea. **Applicants claims do not recite any law of nature, natural phenomenon or abstract idea.** For example, claim 1 clearly does not recite a law of nature. Nor does claim 1 recite a natural phenomenon. Nor does claim 1 recite an abstract idea. Instead, claim 1 is very specific to a computer-implemented method that includes receiving a list from a fabric driver of fabric devices available to a host system, wherein the fabric driver is part of an operating system for the host system. There is nothing abstract about a list of fabric devices, a fabric driver, a host system and an operating system. These are not abstract concepts. Nor does the claim as a whole recite an abstract idea. Instead, fabric divers and devices, host systems, and operating systems are all very specific real-word items that has very specific practical applications. Claim 1 recites very specific, non-abstract, act of receiving a list from a fabric driver of fabric devices available to a host system, wherein the fabric driver is part of an operating system for the host system. The list of fabric devices, a fabric driver, a host system and an operating system are all elements that limit the scope of the act of receiving a list to a very specific practical application. Claim 1 includes the further acts of receiving a request to select a subset of the fabric devices from the list, and requesting the fabric driver to create an operating system device node in the host system for each of the fabric devices in the subset not already online, wherein each operating system device node provides a mechanism for accessing a corresponding one of the subset of fabric devices through the operating system executing on the host system. Again, the language of the claim requires the acts of receiving a list, receiving a request, and requesting a fabric driver to be performed within a very specific practical context. The claim does not recite these acts in the abstract. Therefore, the Examiner has failed to establish that Applicants’ claims recite a law of nature, natural phenomenon or abstract idea.

Even if Applicants’ claims could be considered to recite a law of nature, natural phenomenon or abstract idea, they would still be statutory because they are for a practical application. According to the Guidelines IV.C.2, a claim that recites a law of nature,

natural phenomenon or abstract idea is still statutory if it is for a practical application of the law of nature, natural phenomenon or abstract idea. The Guidelines state that there are “various ways” that a claim may recite a practical application of a law of nature, natural phenomenon or abstract idea. The Guidelines discuss two examples of how a claim may be for a practical application of a law of nature, natural phenomenon or abstract idea. These two examples are “practical application by physical transformation” and “practical application that produces a useful, concrete and tangible result.” The Guidelines are clear in that these are just two ways, **but not the only ways**, by which a claim may be for a practical application of a law of nature, natural phenomenon or abstract idea. Note that in Annex II, the Guidelines state: “While the Supreme Court has ruled that ‘transformation’ is relevant to a section 101 inquiry, the Court has expressly refused to hold that it is the only test for determining patent eligibility.” (emphasis added). In both the *State Street* case and the *Diamond v. Diehr* case, the courts referred to a “useful, concrete and tangible result” and a “transformation”, respectively, as examples of why the claims in question were statutory. The Courts have never said that these are the only way by which a claim may be statutory. Instead, the Courts have more generally referred to a “practical application” when considering claims that recite a law of nature, natural phenomenon or abstract idea. As shown above, Applicants’ claims very clearly recite a practical application in the realm of fabric devices, fabric drivers, host systems and operating systems.

Furthermore, Applicants’ claims do recite a useful, concrete and tangible result. For example, the acts of receiving the specific list and specific requests recited in claim 1 result in a request being made to the fabric driver. The act of requesting recited in claim 1 would inherently include such a request represented by tangible data within the computer (e.g. a program call or message). **Within a computer-implemented method, this request is every bit as useful, concrete and tangible as the share price calculated in the claim in *State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 149 F.3d 1368, 47 USPQ2d 1596 (Fed. Cir. 1998).**

In summary, as shown above, Applicants' claims each fall into one of the section 101 statutory subject matter categories and do not recite a law of nature, natural phenomenon or abstract idea. Therefore, Applicants' claims are statutory. Even if Applicants' claims could be considered to recite a law of nature, natural phenomenon or abstract idea, they would still be statutory since they are for a practical application.

Applicants further traverse the rejection on the grounds that the Examiner has failed to consider every limitation of every rejected claim. For example, claim 4 recites a method for discovering fabric devices including, in part, "creating an operating system device node in the host system for each of the fabric devices in the selected subset not already online". Thus, claim 4 clearly recites a tangible, useful result, contrary to the Examiner's assertion. Therefore, the § 101 rejection of claim 4 is improper. Applicants' respectfully request removal of the § 101 rejection of claim 4. Similar remarks also apply to claims 8, 47 and 52, as they recite similar limitations using similar language. In general, the Examiner has failed to state a *prima facie* rejection for **each** rejected claim, including the dependent claims.

Allowed Claims:

Claims 23-30 and 32-42 are allowed.

CONCLUSION

Applicants submit the application is in condition for allowance, and prompt notice to that effect is respectfully requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above-referenced application from becoming abandoned, Applicants hereby petition for such an extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5181-79200/RCK.

Also enclosed herewith are the following items:

- Return Receipt Postcard
- Petition for Extension of Time
- Notice of Change of Address
- Other:

Respectfully submitted,



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